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SINGLE BENCH

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IN THE HIGH COURT OF JUDICATURE AT BILASPUR(C.G.)

WRIT PETITION NO.2856 /2005

PETITIONER

Manik Mehta, S/o. Shri Vishnu Dutt Mehta, Aged about 34 years, R/o. 48/6, Nehru Nagar (West), Bhilai, District Durg (C.G.)

VERSUS

RESPONDENTS

1. State of Chhattisgarh, Through its Secretary, Department of Home (Police), Mantralaya, D.K.S. Bhawan, Raipur (C.G.)
2. Director General of Police, Police Head Quarter, Raipur (C.G.)
3. Senior Superintendent of Police, Durg (C.G.)
4. Investigating Officer (I/c. Police Station), P.S. Supela, Bhilai, District Durg (C.G.)
5. N.K. Tank, S/o. Purushottam Jethabhai Tank, Aged about 54 years, R/o. 67/2, Nehru Nagar (West), P.S. Supela, Bhilai, District Durg (C.G.)
6. Bipin Bansal, S/o. Jagdish Singh Bansal, Aged about 38 years, R/o. LIG/40, Vaishali Nagar, Supela, Bhyilai, District Durg (C.G.)
7. Rajesh Singh, S/o. Paras Singh, Aged about 28 years, R/o. Umarpoti, Loknagar, Utai, District Durg (C.G.)

P.R. No. 2466/05 Presented by Shri K.K. Tank dated 6/6/05

RECEIVED-COPY ... CLERK to Mr. Gupta ... BILASPUR

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF WRIT IN THE NATURE OF MANDAMUS, CERTIORARI, PROHIBITION AND FOR OTHER SUITABLE WRIT OR WRITS, ORDER OR ORDERS, DIRECTION OR DIRECTIONS.

The petitioner, above named, most humbly and respectfully submits as under :-

01. **PARTICULARS OF THE PETITIONER** :

As stated above in the cause title.

XI-HC-22

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

मामला क्रमांक W.P.No.2856 **सन्** 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

11.7.2005

Smt. Fouzia Mirza, counsel for the petitioner.

Shri R.R. Sinha, Panel Lawyer for the respondent.

Heard on admission.

The petitioner has preferred this writ petition under Article 226/227 of the Constitution of India with the allegation that the petitioner is the tenant of respondent No.5 herein, he took the shop in question on monthly rent and regularly paying the rent to respondent No.5. On 28.2.2005 the petitioner closed his shop at 9.00 p.m. and left for his house. On the very next morning i.e. on 1.3.2005 when he was about to leave for his shop two vehicle i.e. Tata Indica & Tata 407 stopped in front of his house and respondent No.5 alongwith his servants namely Rajesh & Bipin Bansal and with some gunda elements, stepped out from the vehicle and dumped some of the stock materials of his shop namely Future Vision in front of his house. On this the petitioner rushed to his shop to check the situation, after reaching the shop in question the petitioner found that locks of his shop have been replaced and same has been locked by other locks, therefore, he went to the Police Station Supela to lodge the complaint against respondent No.5 to 7 herein and the police registered the offence under Crime No.193/05. The petitioner's further case is that respondent No.4 has not investigated into the complaint lodged by the petitioner, not taken the cognizance of offence committed by respondent Nos. 5 to 7 of criminal trespass and theft of materials from the shop owned by the petitioner and filed the charge sheet under Section 448 of the IPC with the connivance of

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक 74

मामला क्रमांक W.P. 2856 सन् 2005

..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित -2-	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

respondent Nos. 5 to 7. Ultimately, it has been prayed that a writ of mandamus commanding respondent Nos.2 & 3 to give possession of shop back to the petitioner along with entire stock materials, fixtures, furniture and documents etc. and further respondent No.5 be directed not to interfere in the business of the petitioner and to pay compensation for the materials worth Rs.12,50,000/-. It has also been prayed that respondent No.4 be directed to take cognizance of offence of lurking house breaking and house trespass at night and wrongly obtaining the possession of the property of the petitioner.

Counsel for the petitioner submits that respondent No.4 has filed the charge sheet for commission of offence under Section 448 of the IPC against respondent Nos. 5 to 7 herein, whereas, on facts the offence of theft is also made out against respondent No.5 to 7 and therefore, respondent No.4 ought to have filed the charge sheet under Section 379 of the IPC.

Having heard learned counsel for the petitioner, I have perused the petition & prayer made therein and I am of the opinion that the present petition is misconceived, no such direction can be given to any police authority to file the charge sheet under a particular offence against any person. It is an admitted position that respondent No.4 registered the case on the complaint of petitioner, investigated into matter and thereafter, filed the charge sheet also. Now, if the petitioner is not satisfied with the offence under which the charge sheet has been filed against respondent Nos. 5 to 7 then the petitioner is at liberty to move to concerned Magistrate under the provisions of the Cr.P.C. and obtain a direction from the Magistrate

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उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

आदेश पत्रक

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..... विरुद्ध .....

आदेश का दिनांक आदेश क्रमांक सहित	आदेश हस्ताक्षर सहित	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अन्तिम आदेश

in accordance with law. As far as the direction for delivery of possession of shop in question to the petitioner is concerned, same cannot be given in the writ jurisdiction, for that purpose also the petitioner can avail the remedy available under the civil and criminal law in accordance with law.

In the result, the petition has no substance, same is liable to be dismissed and it is hereby dismissed at the admission stage itself.

Sd/-
L.C. Bhadoo
Judge

Roshan